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LANDLORD AND TENANT—PROVISION AGAINST ASSIGNMENT WITHOUT CONSENT—CONSENT CANNOT BE UNREASONABLY WITHHELD.—The plaintiff leased a house under an agreement which contained a provision that he was not to assign, underlet, or part with the possession of the house without the landlord's consent, which was "not to be unreasonably withheld in case of a respectable and responsible person." The defendant purchased the landlord's reversion and offered to purchase what remained of the plaintiff's term in order to have the house for personal occupation. The exact nature of the negotiations did not appear. The plaintiff later assigned her interest to a respectable and responsible person but the defendant refused to consent to the assignment because she wanted the premises herself. *Held,* that the refusal was unreasonable and that the plaintiff was entitled to assign without consent. *In re Winfrey & Chatterton's Agreement* [1921] 2 Ch. 7.

In England, covenants not to assign or sublet often provide that the lessee will not do so without the consent of the lessor, such consent "not to be unreasonably withheld." It is generally held that a covenant in this form does not give the lessee a right of action for an arbitrary refusal but merely allows him to assign without consent. *Treloar v. Bigge* (1874) L. R. 9 Exch. 151; *Sear v. House Property & Investment Society* (1880) L. R. 16 Ch. Div. 387; *Goodwin v. Saturley* (1900, Q. B.) 16 T. L. R. 437. Where, however, there is an express covenant by the lessor not to withhold consent unreasonably, not only may the lessee assign without consent in case of an arbitrary refusal, but he may also bring an action for breach of the lessor's covenant. *Ideal Film Renting Co. v. Nielsen* [1921] 1 Ch. 575. However inoperative an arbitrary refusal may be, still where covenants of this kind exist, permission to assign *must* be asked even if only to be refused. *Barrow v. Isaacs* [1891] 1 Q. B. 417; *Lepla v. Rogers* [1893] 1 Q. B. 31; *Eastern Telegraph Co. v. Dent* (1898, Q. B.) 78 L. T. R. 713; see (1898) 105 LAW TIMES, 288. On facts similar to the instant case, a refusal because the lessor desired possession himself was held to be unreasonable. *Bates v. Donaldson* [1896] 2 Q. B. 241; see (1896) 30 IRISH LAW TIMES, 389. An objection based solely upon the nationality of the proposed assignee has been held to be unreasonable. *Mills v. Cannon Brewery Co.* [1920] 2 Ch. 38; *Lempriere v. Burghes* [1921, Sup. Ct.] New Zealand L. R. 307; *Wing v. Kensit* [1921] N. So. Wales R. 464. Where the lessor refused to permit a tenant, an assignee of the original lease, to assign to his wife except on the condition that he covenant to pay the rent and perform all covenants in the lease, it was held that the refusal was unreasonable. *Evans v. Levy* [1910] 1 Ch. 452. See Woodfall, *Landlord and Tenant* (20th ed. 1921) 807-809. There have been *dicta* to the effect that if the lessor offered the same terms as the proposed assignee, to refuse to consent to an assignment would not be unreasonable. *Lehmann v. McArthur* (1868) L. R. 3 Ch. App. 496, 501, 504; *Bates v. Donaldson, supra,* at p. 245. The present decision expressly disapproves of this suggestion, declaring that even though the same terms were offered by the lessor, his refusal would be arbitrary, a perhaps more reasonable construction. The clause was not intended to give the lessor a preference. It was inserted only to secure the lessor from having an undesirable assignee thrust upon him. There are apparently no American decisions on the exact point of the instant case.

PARENT AND CHILD—CUSTODY OF INFANTS.—During the mother's absence from home and without her consent, the father placed their children in a Roman Catholic academy. The mother applied for a writ of habeas corpus to have the children returned to their home and the joint custody of herself and her husband. *Held,* that the children should be returned to their home. *People, ex rel. Delaney, v. Mt. St. Joseph's Academy* (1921) 198 App. Div. 75, 189 N. Y. Supp. 775.

Early American cases gave the father the custody and control of the minor children in preference to the mother. *Johnson v. Terry* (1867) 34 Conn. 259. This was the early common-law rule; but it has been considerably modified by

statute and judicial decision, both in England and the United States. *Commonwealth v. Walsh* (1905) 14 Pa. Dist. 644; *The Custody of Infants* (1918) 52 IRISH LAW TIMES, 295. What was formerly the father's paramount right is now sometimes considered as only a *prima facie* right, yielding to the mother if best for the child. *Jensen v. Jensen* (1919) 168 Wis. 502, 170 N. W. 735. The trend of the latest decisions is to attach equal weight to the claims of each parent. The child will be confided, at the discretion of the court, to the custody of the parent considered the more suitable. *In re Pinnell* (1921, Calif.) 198 Pac. 215; *Turner v. Turner* (1920) 150 Ga. 191, 103 S. E. 413. But the mother of an illegitimate child has a claim to its custody superior to that of the putative father or any other person. *Garrett v. Mahaley* (1917) 199 Ala. 606, 75 So. 10. As between parents and strangers, some courts place the welfare of the child entirely above any sentimental family considerations. *Thompson v. Arnold* (1921, Mo.) 230 S. W. 322. But all are rightly reluctant to deprive parents of their children. *Jendell v. Dupree* (1921, Kan.) 195 Pac. 861. Such assumption of judicial control over family life is indeed paternalistic. Some objection to such a tendency is evidenced by declarations that no court should thwart or disregard the parental right of custody, even though it conduces to the best interests of the child. *Ex parte Kirchner* (1920, N. J.) 111 Atl. 737. The courts have not yet reached the point where they feel themselves in *loco parentis*. *In re Mead* (1920, Wash.) 194 Pac. 807.

PATENTS—GENERIC INVENTION—DOCTRINE OF EQUIVALENTS.—The complainant, patentee of the first mechanical candy-pulling device, sought to enjoin the defendant from manufacturing a new candy-pulling machine embodying the same general "in-and-out" movement patented in the original invention. The defences were that the new machine operated through an improved arrangement of the moving parts with the elimination of a certain "candy trough" alleged to be essential in the original, and that the complainant's device had not been a success. *Held,* that the patent of the complainant was a primary or generic one and was infringed by the subsequent device of the defendant employing the same general principle. *Hildreth v. Mastoras* (1921) 42 Sup. Ct. 20.

Whether the substitution of different but equivalent parts or arrangement in a patented device infringes the patent rights depends upon the nature of the invention patented. *McCormick v. Aultman* (1895, C. C. A. 6th) 69 Fed. 371; Macomber, *The Fixed Law of Patents* (2d ed. 1913) par. 373-380. Where the device is a pioneer in its field, the range of equivalent substitutes which are considered infringements will be proportionately broad. Macomber, *op. cit.* par. 375; *Reece Machine Co. v. Globe Machine Co.* (1894, C. C. A. 1st) 61 Fed. 958. Although the definition of an "equivalent" can be determined only from the particular facts, it is now well settled that a device may be such though it performs more functions than the device it replaces or performs them better. *Powell v. Leicester Mills Co.* (1901, C. C. A. 3d) 108 Fed. 386; 22 Cyc. 456. But the equivalent must be distinguished from a new invention and must have been known to "ordinarily skillful" mechanics at the date of patent. *Magic Light Co. v. Economy Gas Lamp Co.* (1899, C. C. A. 7th) 97 Fed. 87; *Read & Sons v. Schultze-Berge* (1896, C. C. S. D. N. Y.) 78 Fed. 493. The general rule, as applicable to the instant case, is that a transposition of parts or motion will not obviate infringement of a generic patent when substantially the same result is obtained. Macomber, *op. cit.* par. 457; *International Co. v. Bundy Recording Co.* (1908, C. C. A. 2d) 159 Fed. 464; *Letson v. Alaska Packers Assoc.* (1904, C. C. A. 9th) 130 Fed. 129. The defence that the original invention was never a success and consequently not entitled to a broad range of equivalents was correctly overruled. The patented device need not be commercially successful or perfect in its operation. It is enough if it actually works and performs the new function. *People's Telephone Co. v. Am. Bell Tele-*